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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 891

CECIL McKOWN,

Petitioner,

vs.

STATE OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

B. K. ROBERTS,
W. J. OVEN, JR.,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 891

CECIL McKOWN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Cecil McKown respectfully shows unto this Honorable Court:

A

Summary Statement of the Matter Involved

The purpose of this petition is to have this Court review a decision (R. 124) of the Supreme Court of Florida denying a petition for a writ of certiorari (R. 121) to review an order of the Circuit Court of Polk County, Florida, affirming on appeal a judgment of the Criminal Court of Record of the same county finding the petitioner guilty of the offense of possession of intoxicating liquor for the purpose of sale in a county which had voted against the sale of intoxicating liquors, wines or beer. This petition likewise seeks to have this Court review a decision of the Supreme

Court of Florida denying a petition for a rehearing (R. 127) in the same proceeding.

The petitioner was arrested at midnight, without a warrant (R. 70), and on private premises (R. 66) leased by him (R. 109). A subsequent search of the premises, likewise without a search warrant, was conducted the same night by the arresting officials, and revealed the presence of whiskey stored on these premises. The whiskey was seized by the officers and removed to the sheriff's office.

Prior to arraignment petitioner filed a motion to suppress and return the evidence so seized. After hearing evidence on this motion (R. 3-40) the trial court denied (R. 40) the attempt to suppress, and the case proceeded to trial. Briefly stated, the evidence amounted to no more than the fact that a deputy sheriff, being orally informed that petitioner was unloading and storing the whiskey on the leased premises, went out at night, without a warrant, entered upon the premises, saw some whiskey, arrested petitioner, and made the search and seizure, without warrant and without consent from petitioner.

At the trial the whiskey so seized was introduced in evidence (R. 74) over the objection of petitioner. The objection was renewed at the conclusion of the evidence for the prosecution (R. 97), and by motion for a new trial (R. 101), but with similar lack of success.

The fact that Polk County has voted against the sale of whiskey is not denied. Polk County is situated in the central part of the state, however, and the great majority of counties, particularly in that section, permit such sale under local option provisions. Possession of whiskey in a "dry" county is not illegal, but possession in such a county with intent to sell unlawfully is condemned as a misdemeanor (F. S. 568.05).

Verdict (R. 103) and judgment (R. 105) were rendered against petitioner. His appeal (R. 106) to the circuit court

was unsuccessful (R. 120) and his petition (R. 121) to the Supreme Court of Florida for a writ of certiorari was denied (R. 124). A subsequent petition for rehearing (R. 124) met a similar ruling (R. 127).

It is the action of the Supreme Court of Florida, denying the petition for a writ of certiorari and denying the petition for a rehearing thereon, which your petitioner now asks this Court to review.

B

Reasons Assigned in Support of Petition

The petitioner should have his writ because the state court has decided a federal question of substance in a way not in accord with applicable decisions of this Court. Specifically:

First. The state court, in a jurisdiction which has expressly adopted (F. S. 933.19) the provisions of the opinion in *Carroll* v. *U. S.*, 267 U. S. 132, as the statute law applicable to searches and seizures and the admissibility of evidence, has, despite the language of that opinion, held admissible evidence obtained by search of private premises (as opposed to search of an automobile or other vehicle) without a warrant and not made as an incident to a lawful arrest.

Second. The state court, in a jurisdiction which has adopted (F. S. 933.19) as the statute law relating to searches and seizures, and the admissibility of evidence so obtained, the decisions of this court construing the Fourth Amendment to the Constitution of the United States, has nevertheless held admissible evidence obtained by search of private premises, without a warrant and not made as an incident to a lawful arrest.

Third. The state court, by permitting the introduction of evidence obtained by illegal search of private premises,

without a warrant and not as an incident to a lawful arrest, has denied the petitioner the due process of law guaranteed by the Fourteenth Amendment.

C

Jurisdiction

This petition is submitted and review of the lower court decision prayed pursuant to authority of Title 28 U. S. C. A. par. 344 (b) (Judicial Code, Section 237, amended).

Wherefore, your petitioner prays that writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Florida, commanding that court to certify and to send to this Court for its review and determination on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in said case entitled Cecil McKown vs. State of Florida; that the said decisions of the Supreme Court of Florida and every part thereof may be reviewed by this Honorable Court; that said judgment may be reversed by this Honorable Court; and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

CECIL MCKOWN,
Petitioner,

By B. K. ROBERTS,
His Attorney,

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Dated February 26th, 1946.